

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7357  
AWARD NO. 24, (Case No. 24)**

**BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES DIVISION - IBT RAIL CONFERENCE**

**VS**

**CP RAIL SYSTEM/DELAWARE AND HUDSON  
RAILWAY COMPANY, INC.**

William R. Miller, Chairman and Neutral Member  
Kevin D. Evanski, Employee Member  
Anthony Stillittano, Carrier Member

Hearing Date: December 20, 2013

**STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:**

**Appeal of discipline on behalf of BMW member Mr. Ryan Leonard  
requests that the discipline of thirty (30) demerits and time served assessed  
to Mr. Leonard's personal record be removed and or reversed."  
(Carrier File No. 8-00858)**

**FINDINGS:**

Public Law Board No. 7357, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On February 16, 2012, the Claimant was taken out of service because his conduct while staying at company lodging was alleged unacceptable to hotel management. On February 21, 2012, Claimant was directed to attend a formal Investigation on February 23, 2012, which was mutually postponed until February 28, 2012, concerning in pertinent part the following charge:

**"The purpose of this Investigation will be to determine your responsibility, if any, on your alleged violations of Canadian Pacific Motel and Camp Rules at the Company provided hotel stay's for the Month of February 2012, at the Best Western in Plattsburgh, NY while employed on CREWP1 as a System Equipment Operator."**

On March 16, 2012, Claimant was notified that he had been found guilty as charged and assessed 30 Demerits and Time Served.

It is the Organization's position that the Investigation was not "fair and impartial" because the Claimant was pre-judged as being guilty which was shown by the fact that he was pulled out of service prior to the Hearing. It further argued that it was improper for Mr. Neil Higgins, Division Engineer, to testify at the Hearing because he removed the Claimant from service and essentially was the Charging Officer. It asserted that calling a Charging Officer as a witness was a fatal flaw. Additionally, the Organization suggested that the charges were not precise as no specific Rules were cited as being violated making it impossible for the Organization to prepare a proper defense. It further asserted that the Hearing Officer was combative and he improperly ignored objections, blocked relevant questioning by the Organization and continued to enter Rules into the transcript that the Claimant was never charged with having violated. Based upon those procedural errors the Organization asked that the discipline be set aside without reviewing the merits.

Turning to the merits the Organization asserted that the Carrier did not meet its burden of proof as all of its alleged evidence was based upon hearsay and unsigned statements from individuals that did not appear at the Hearing which denied the Claimant his right to face his accusers. It concluded by requesting that the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier that Claimant received a "fair and impartial" Hearing. It argued that Rule 25 of the Agreement does not require that specific Rules must be stated in the Notice of Investigation and it is clear from a reading of the transcript that the Claimant and the Organization understood the charges. It further argued that the Hearing Officer did not do anything that hindered the Claimant's defense. Additionally, it stated that the Claimant was not pre-judged and it is a common occurrence on the property to remove an employee from service prior to an Investigation if the alleged misconduct was of a serious nature such as that exhibited by the Claimant. Furthermore, the Organization's allegation that Mr. Higgins should not have been called as a witness because he was the Charging Officer was incorrect as Mr. Higgins removed the Claimant from service, but he was not the Charging Officer, therefore, there was no prohibition against being a witness. It asked that the case be judged upon its merits rather than alleged procedural errors.

The Carrier asserted that when the record is reviewed it is clear that the Claimant was removed from service, because the Carrier received a complaint from the owner of the Best Western, in Plattsburg, New York, that his females, (night crew) employees felt uncomfortable, as the Claimant's behavior was very odd and unsettling. In response to the Organization's argument that the unsigned complaints should not be given any consideration the Carrier argued that because the complaints were not signed did not detract from their authenticity because they were submitted by the Hotel Owner, Mr. Smith, who would have never submitted them to the Carrier if he believed they were fraudulent nor would the Hotel Manager have called the Carrier about the Claimant's conduct if there was no validity to their concerns. Simply put the Hotel

Owner and its employees had no reason to offend a good client, the Carrier, by making false charges as that could hurt them financially. It further argued that the statement from the Road Foreman, Mr. M. O'Sullivan, was an accurate description of what the General Manager of the Best Western, Ms. Julie Kramer, reported to him regarding the sexual harassment complaint she received from her female employees and that statement carries significant weight when measured in conjunction with the testimony of the various witnesses. It closed by asking that the discipline not be disturbed and the claim remain denied.

The Board has thoroughly reviewed the transcript and the record of evidence and the procedural arguments raised by the Organization and is not persuaded that there were any discernible procedural irregularities that tainted the Organization's ability to effectively defend the Claimant. It is determined that the formal Investigation was conducted in a fair and impartial manner and Claimant was afforded all of his "due process" Agreement rights. The dispute will be resolved on its merits.

The record reveals that the Claimant stayed at Carrier furnished lodging, the Best Western in Plattsburgh, New York, during the month of February, 2012. On February 16th the Claimant was evicted by hotel management because of alleged odd behavior and sexual harassment of the female Front Desk Agent, shortly, thereafter, the Carrier removed the Claimant from service pending a formal Investigation.

On February 17, 2012, Ms. Julie Kramer, Hotel Manager submitted the following statement:

**"On February 16, 2012, I was made aware that one of my front desk employees was being harassed by Ryan Leonard a CP Rail employee. It was reported to me that during the 11 pm to 7am shift the weekend of the 10th and 11th my female employee was being followed by him in the middle of the night, he kept hanging at the front desk and asked her if there was cameras in the hotel or in the office, she said no and asked why, he stated because he wanted to be alone with her in the office. I was also advised that he makes comments about her at other times and when she is not on duty asking other employees about her. This employee feels very unsafe with him as does my other employees of the hotel.**

**Also during the audit shift the weekend of the 4th of February he came down to the front desk at around 2:30 a.m. or so and was under the influence and locked himself out of his room and was given another room key by another female employee.**

**I have been told his behavior has been very odd and unsettling to my staff. He also mentioned to 2 staff members something to the effect that he was wanted by the police in Pennsylvania.**

**Based on this I notified his supervisors at CP Rail and the owner Bob Smith went to his room and asked him to leave, he asked why and was told he was threatening one of his employees and he needs to leave immediately and never to come on the Best Western or Ground Round property again. He left without incident."**  
*(Underlining Board's emphasis)*

The Front Desk Agent who submitted her complaint to her superior Ms. Kramer wrote the following in pertinent part:

**"On the afternoon of Feb. 1st Ryan Leonard a CP Rail employee arrived at our hotel. I checked him in, and as he was leaving he stopped at the front door and proceeded to tell me and my other co-worker that if we saw men in uniforms and blue cars to call him in his room with a "code work" so he could leave quickly. We were confused and uncertain if he was joking or serious. After we both gave him weird look he then said "I did some evil things in Pennsylvania and I'm worried about crossing the borders." ...."**

The Front Desk Agent went on to write the following:

**"On the night of Feb. 11th I worked the audit shift 11 pm until 7 am. I had just locked up the office to deliver express checkout receipts (3 am) when I went around the first corner and Mr. Leonard was standing there. I continued walking putting the receipts under the doors when he approached me asking how my night was going, I said fine. He then asked "so they have cameras in your office" at this point I started to get very uncomfortable he then said "that's too bad girl that we can't be alone". I firmly told him to stop and to go back to his room, he asked me if he could walk with me back I told him no, just go to your room now.**

\* \* \*

**He has made me feel very uncomfortable and has acted very inappropriately while here at our hotel." *(Underlining Board's emphasis)***

A co-worker of the Front Desk Agent submitted a statement that confirmed the aforementioned statement wherein she said the Claimant appeared to have been under the influence one evening and that he made the female Front Desk Agent uncomfortable enough that she would ask others to deal with the Claimant. Lastly, she stated that the Claimant's behavior was odd.

The Organization objected to the admission of the hotel employee's statement on the basis they were not notarized and it did not have the opportunity to cross-examine those individuals. It is well settled throughout the industry, by arbitral precedent, that the Carrier does not have subpoena power to require non-employees to testify at formal Hearings and that written statements by those employees can be considered in the resolution of disputes. It is further noted that there is nothing in the parties' Agreement that requires statements to be notarized before they can be accepted as evidence for consideration. The value of written statements must be judged on an individual basis and the statements submitted in this instance have been reviewed accordingly.

The record further indicates that Road Foreman, Mr. Michael O'Sullivan, had a personal conversation with the General Manager of the hotel regarding the Claimant's alleged conduct. Mr. O'Sullivan submitted a written statement on February 22, 2012, and he stated the following:

**"At 08:56 on February 16, 2012, I received a call on my cell from Julie Kramer, General Manager, Best Western, Plattsburg. Ms. Kramer stated they had a sexual harassment complaint against a Canadian Pacific employee who she identified as Ryan Leonard. I asked what the complaint was and Julie told me a Best Western female employee had reported that Mr. Leonard had followed her around the hotel on several occasions making unwelcome sexual advances. I told Ms. Kramer that Mr. Leonard was not an operations employee, that I would investigate and someone would call her as soon as possible. At 08:58 on February 16, 2012, I called the Division Engineer, Neil Higgins, told him that an employee by the name of Ryan Leonard had been reported by the Best Western Plattsburg as having sexually harassed an employee and asked Neil to call Ms. Kramer. I called Ms. Kramer back at 10:04 to follow up. She stated that Mr. Higgins and Mr. Blanchfield had contacted her. She also stated that the hotel owner was in the process of evicting Mr. Leonard from the hotel." (Underlining Board's emphasis)**

On page 26 of the transcript Mr. N. Higgins, Division Engineer, verified that he had a telephone conversation with Ms. Kramer and she told him exactly what she wrote in her statement of February 17th. Mr. Higgins testimony combined with Carrier Officer O'Sullivan's statement of February 22nd confirm that the hotel employee's statements are consistent with what was told to the Carrier Officers, therefore, it is determined that those statements are substantive. The Board further notes that the hotel employees had no reason not to be forthright as they had nothing to gain by not telling the truth nor did the hotel have any reason to offend a good customer, the Carrier, by making false accusations that might hurt them financially.

On page 44 of the transcript the Claimant testified in pertinent part:

**"...Told the girl at the front desk, you know, I was just - - Like, oh, I just stated that if there's anybody here, jokingly stated, if anybody is here in uniform looking**

**for me, Ryan Leonard, could you call up to my room and warn me. Just like goofing around and joking with the girl. And she asked me, why, what did you do. I said, I was just being evil." (Underlining Board's emphasis)**

Claimant's comment which he called a "joke" was not appropriate and certainly gave the Front Desk Clerk reason to have concern when the Claimant checked into the hotel on February 1, 2012, and is consistent with the hotel employees statements.

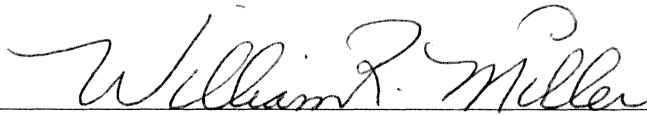
On page 50 of the transcript the Claimant testified that he inadvertently met the Front Desk Agent in the hotel hallway on February 11, 2012, and asked to accompany her. Claimant's recollection of the incident is somewhat different than the hotel employee's rendition of the event, however, the Claimant's testimony adds credence to the hotel employees statements that the incident occurred. As previously stated there was no reason for the hotel employees not to accurately report the Claimant's behavior whereas review of the Claimant's testimony shows it to be self-serving as the Claimant colorized the multiple incidents.

When the entire record is reviewed it becomes apparent that substantial evidence was adduced at the Hearing that the Claimant was guilty as charged.

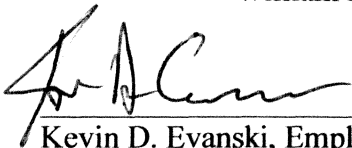
The only issue remaining is whether the discipline assessed was appropriate. Claimant's violations were of a serious nature and the Carrier's assessment of 30 demerits with time served in this instance was in accordance with its Disciplinary Policy and because it was not arbitrary, excessive or capricious it will not be set aside. The claim will remain denied.

**AWARD**

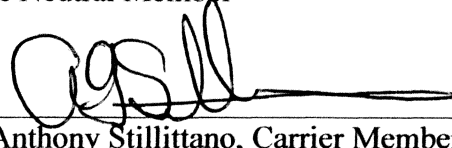
Claim denied.



William R. Miller, Chairman & Neutral Member



Kevin D. Evanski, Employee Member



Anthony Stillittano, Carrier Member

Award Date: MARCH 13, 2014